

(1965) 03 BOM CK 0038

In the Bombay High Court

Case No : Special Civil Application No. 1199 of 1964

Ishwara Bhau Sawant

APPELLANT

Vs

Pandurang Vasudeo Karmarkar

RESPONDENT

Date of Decision : 19-03-1965

Acts Referred:

Transfer of Property Act, 1882 — Section 60, 76

Citation : (1965) 67 BOMLR 558 : (1965) MhLj 893

Hon'ble Judges : H.K. Chainani, C.J;Gokhale, J

Bench : Division Bench

Judgement

H.K. Chainani, C.J.—These two applications have been heard together as they raise a common question of law. The first application No. 1199 of 1964 relates to two lands, which originally belonged to one Pandurang and his two brothers Waman and Vinayak. In 1931 they mortgaged these lands by an ostensible sale-deed to Maruti Sawant alias Rede. The petitioners are the heirs and successors of Maruti. In 1951 Pandurang filed a suit for a declaration that the transaction of 1931 was really a mortgage and for taking accounts under, the Deccan Agriculturists Relief Act. A declaration was made in that suit in 1951 that the transaction was a mortgage and that the amount due on the mortgage was Rs. 2,800. This decision was confirmed in appeal by the District Judge. In 1956 Pandurang filed a suit for redemption of the mortgage and for obtaining possession of the lands. The petitioners contended in that suit that as they were lawfully cultivating¹ the lands, u/s 2A of the Bombay Tenancy Act of 1939 they were deemed to be tenants, that they had become protected tenants u/s 3A of that Act, that they continued to be protected tenants under old Section 31 and present Section 4A of the Bombay Tenancy Act of 1948 and that with effect from April 1, 1957, they had become the owners of the lands u/s 32 of the Tenancy Act. The learned trial Judge, therefore, referred to the Mamlatdar for his decision the question whether the petitioners as mortgages-in-possession are protected tenants and whether they had become the owners of the lands since April 1, 1957. The Mamlatdar answered this question in the negative. In appeal the

Deputy Collector took a somewhat different view. According to him the petitioners had acquired the rights of tenants and protected tenants, but these rights were in abeyance during the subsistence of the mortgage and that these would revive when the mortgage was redeemed or when it was extinguished. Against the order made by him both the parties, the petitioners and opponents Nos. 1 to 3, applied in revision to the Bombay Revenue Tribunal.

2. The facts of application No. 1449 of 1964 are that the three lands in dispute originally belonged to the husband of opponent No. 1. These lands were mortgaged with possession in 1928 to the petitioner. In 1959 opponent No. 1 filed a suit for redemption of the mortgage. The petitioner contended in that suit that he was a protected tenant of the lands. The Civil Court, therefore, made a reference to the Mamlatdar for deciding the issue whether the petitioner proved that as a mortgagee he had become the tenant of the lands and as such become the owner thereof. The Tenancy Aval Karkun held that the petitioner had acquired the rights of a tenant. This finding was confirmed in appeal by the Deputy Collector. Opponent No. 1 then applied in revision to the Bombay Revenue Tribunal. The matter came up for hearing before a single member of the Revenue Tribunal. As the questions involved were of considerable importance, he referred the matter to a larger Bench.

3. These two applications along with some other applications were then heard by a Full Bench of the Bombay Revenue Tribunal. The Full Bench has in a well considered and able judgment held that a mortgage-in-possession could not be deemed to be a tenant u/s 2A of the Bombay Tenancy Act of 1939. In the first application the Revenue Tribunal accordingly held that the petitioners had not acquired the rights of tenants, which could revive or survive after the redemption of the mortgage. In the second application the petitioner was held not to have acquired the rights of a tenant, The orders made by the Tenancy Aval Karkun and the Deputy Collector were set aside. The correctness of the view taken by the Full Bench of the Revenue Tribunal is being challenged before us in these two applications.

4. The Bombay Tenancy Act of 1939 as originally enacted gave protection to persons who were tenants under the ordinary law, that is, those who had acquired their tenancy rights under an agreement or contract with their landlords. In fact the Act contained no definition of the word "tenant". In 1946 the Act was amended in order to extend its protection to certain classes of persons, who were cultivating the lands lawfully, but who were not tenants under the ordinary law. New Sections 2A and 3A were inserted in the Act. Section 2A was in the following terms:

(1) A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not?

(a) a member of the owner's family, or

(b) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family,

unless the owner has within one year of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, made an application to the Mamlatdar within whose jurisdiction the land is situated for a declaration that the person is not a tenant,

(2) Where an application under Sub-section (1) has been made and the Mamlatdar refuses to make such declaration and the Mamlatdar's decision is not set aside by the Collector in appeal under Sub-section (3) of Section 13 or by the Provincial Government u/s 28, the person shall be deemed to be a tenant for the purposes of this Act.

Sub-section (1) of Section 3A provided:

(1) Every tenant shall, on the expiry of one year from the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, be deemed to be a protected tenant for the purposes of this Act and his rights as such protected tenant shall be recorded in the Records of Rights, unless his landlord has within the said period made an application to the Mamlatdar within whose jurisdiction the land is situated for a declaration that the tenant is not a protected tenant.

Sub-section (2) of Section 3A was on the same lines as Sub-section (2) of Section 2A.

5. These sections came into force on November 8, 1946. Section 2A, therefore, created a class of statutory or deemed tenants. It made every person lawfully cultivating another person's land a tenant, unless he fell in one of the two excepted categories mentioned in Clauses (a) and (b). This section gave one year's time to the landlord to obtain a declaration that such person was not a tenant. If no application was made by the landlord, then such person became a tenant u/s 2x1 and a protected tenant u/s 3A,

6. The Tenancy Act of 1939, except Sections 3, 3A and 4 as modified, was repealed by the Bombay Tenancy Act of 1948, which came into force on December 28, 1948. Section 31 of this Act, as it originally stood, stated that for the purposes of this Act a person shall be recognised to be a protected tenant if such person had been deemed to be a protected tenant under Sections 3, 3A and 4 of the Bombay Tenancy Act, 1939. The corresponding section now is Section 4A. Section 4 of this Act is in the following terms:

A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not?

(a) a member of the owner's family, or

(b) a servant on wages payable in cash or kind but not in crop share or a hired

labourer cultivating the land under the personal supervision of the owner or any member of the owner's family, or

(c) a mortgagee in possession.

This section specifically excludes a mortgagee in possession from the category of deemed tenants.

7. In both the applications before us the lands had been mortgaged before November 8, 1946, when Section 2A of the 1939 Act came into force. The mortgagees were, therefore, lawfully in possession of the lands. They were also cultivating these lands. No application had also been made by the mortgagors to the Mamlatdar for a declaration that the petitioners, who were in possession of the lands as mortgagees, were not tenants. It has, therefore, been contended that as Section 2A did not exclude a mortgagee in possession, the petitioners became tenants u/s 2A and protected tenants u/s 3A and that they continued to be protected tenants u/s 31 of the Act of 1948 as it originally stood and u/s 4A of this Act as it now stands. It has been urged that the inclusion of Clause (c) in Section 4. of the Act of 1948 shows that the intention was to exclude persons who otherwise would have been within the scope of the section. On behalf of the mortgagees on the other hand it has been contended that Section 2A did not apply to any person whose position was incompatible with that of a tenant, that a mortgagee in possession possesses many rights of ownership, that the land in his possession cannot, therefore, be said not to belong to him, that he cannot, therefore, be said to be a person cultivating the land belonging to another person and that consequently he could not be deemed to be a tenant u/s 2A of the Act.

8. Before we deal with, the arguments, which have been advanced before us, it may be mentioned that apart from the decision of a single Judge in *Laxman Bandu Patil v. Dhavaji Yesu Babar*, (1960) A.O. No. 155 of 1958, decided by Naik J., on July 15/18, 1960 (Unrep.) that a mortgagee in possession could under the Tenancy Act of 1939 acquire the rights of a tenant, there does not appear to be any other decision on this point. There are casual observations in some cases, but the question does not appear to have been decided in any other case. The decision of the single Judge in *Laxman Patil's* case was set aside on some other ground in *Laxman Bamdv, Patil v. Dhavaji Yesu Babwr.* (1962) Letters Patent Appeal No. 1 of 1961, decided by Patel and K.K, Desai JJ., on November 30, 1962 (Unrep.). The learned Judges who decided this appeal did not consider it necessary to decide whether a mortgagee in possession can be deemed to be a tenant. In their judgment they observed:

There has been no case where a mortgagee even under the old Act has been held to be a tenant as a person lawfully in cultivation of the same... We do not find in this case that this is absolutely necessary to decide as to whether or not a mortgagee must be held to be a tenant under the Tenancy Act of 1939. There are difficulties in the way of such a conclusion... It is argued and there is substance in the argument that a mortgagee who has got an interest in the property or

owns a subordinate interest as such when in possession cannot also be held to be a tenant inasmuch as the words "lawfully in cultivation" have obvious limitations.

9. Section 3 of the Tenancy Act of 1948 provides that the provisions of Chap, V of the Transfer of Property Act shall, in so far as they are not inconsistent with the provisions of this Act, apply to the tenancies and leases of land to which this Act applies. There was no similar provision in the Act of 1939. Section 2A of the Act of 1939 does not also begin with a non-obstante clause or words such as "notwithstanding any law, agreement, etc." There are many other sections in this Act which contain this clause. For instance, Section 14 begins with the words "Notwithstanding any agreement, usage or law." The opening words in Sub-section (2) of Section 5 are: "Notwithstanding any agreement, usage, decree or order of a Court of law." It is, therefore, reasonable to assume that the Legislature did not intend to override the provisions of the Transfer of Property Act in regard to mortgages. The words used in Section 2A are undoubtedly wide. One of the presumptions in law is that the Legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the statute. In all general matters outside these limits the law remains undisturbed. General words and phrases, therefore, however wide and comprehensive they may be in their literal sense, must usually be construed as being limited to the actual objects of the Act; See Maxwell on Interpretation of Statutes, 1962 edn., pp. 78-79. If, therefore, it is possible, we must so construe Section 2A as to avoid repugnancy and as not to make ineffective the general provisions of law in regard to mortgages.

10. It has been contended that the position in law of a mortgagee in possession is inconsistent with his being a tenant of the same property. A tenancy of an agricultural land is created when the owner is unable or does not wish to cultivate the land himself. The purpose and object of a mortgage, on the other hand, is to secure a debt and the mortgagee is not entitled to retain possession of the land after his debt has been satisfied. A mortgagor has a right to redeem the land and after redemption to hold and enjoy it as he was entitled to hold and enjoy it before it was mortgaged, This right is recognised in Section 60 of the Transfer of Property Act, which provides that at any time after the principal money has become due, the mortgagor has a right, "on tender of the mortgage-money, to require the mortgagee, where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor and either to retransfer the mortgaged property to him or to such-third person as he may direct. This is a statutory right which, in the words of Lord Macnaghten in *Noakes & Co., Limited v. Rice* [1902] A.C. 24 is of "the very nature and essence of a mortgage and inherent to the thing itself". This right cannot be fettered or restricted by any condition, which impedes, hampers or prevents redemption and any such condition would be void. This statutory right of a mortgagor would be materially affected if a mortgagee is held to be a tenant, for in that case he

cannot get back possession of the land except on the very limited grounds specified in the Tenancy Act. It seems to us very doubtful whether this was intended by the Legislature.

11. That this was not so intended is also suggested by the provisions of the Bombay Agricultural Debtors Relief Act. The first Agricultural Debtors Relief Act was enacted in 1939 about the same time when the Tenancy Act of 1939 was placed on the statute book. Section 45 of this Act provided that notwithstanding anything contained in any law, custom or contract, the Board shall declare any transaction purporting to be a sale of land belonging to a debtor to be in the nature of a mortgage, if the Board was satisfied that the circumstances connected with the sale-deed showed it to be in the nature of a mortgage. Clause (i) in Sub-section (2) of Section 54 provided that the award shall be in the prescribed form and shall include the conditions subject to which the Immovable property, if any, in the possession of the creditor shall be delivered to the debtor. This Act was repealed by the Bombay Agricultural Debtors Relief Act, 1947. This new Act came into force on May 27, 1947, about six months after Sections 2A and 3A of the Tenancy Act of 1939 had been inserted in that Act. The provisions of Section 24 of the Agricultural Debtors Relief Act of 1947 are similar to those of Section 45 of the old Act. Clause (v) in Sub-section (2) of Section 32 provides that the Court may pass an order for the delivery of possession of any property notwithstanding any law or contract to the contrary. These provisions express a clear intention on the part of the Legislature that possession of agricultural land, which had been mortgaged, should be restored to the mortgagor-debtor. It is, therefore, improbable that Section 2A was intended to apply to mortgagees.

12. In *Jaswantrai Tricumlal v. Bed Jiwi* (1956) 59 Bom. L.R. 168, a Full Bench of this Court held that a sub-tenant of a tenant, who had been let into possession of the land at the time when sub-letting was not invalid, became, on the termination of the contractual tenancy, a tenant u/s 2A of the Act of 1939 and that he could, therefore, be said to be lawfully cultivating the land within the meaning of Section 4 of the Act of 1948. In the same case it was observed that under the old Act a tenant of a mortgagee in possession became, on the redemption of the mortgage, a statutory tenant. If, therefore, a mortgagee has introduced a tenant on the land, the mortgagor would not be entitled to obtain possession of the land from him. It has, therefore, been urged that if a tenant of a mortgagee can be deemed to be a tenant u/s 2A of the Act of 1939, there is no reason why a mortgagee should not also be so held. There is, however, a clear distinction between the position of a mortgagee and that of a tenant brought on the land by the mortgagee. This has been pointed out by the Supreme Court in *Dahya Lala v. Rasul* (1962) 65 Bom. L.R. 328., where it has been observed (p. 330) :

...Nor has the contention that the expression "mortgagee in possession" (in Clause (c) of Section 4 of the Act of 1948) includes a tenant from such a mortgagee any force. A mortgagee in possession is excluded from the class of

deemed tenants on grounds of public policy: to confer that status upon a mortgagee in possession would be to invest him with rights inconsistent with his fiduciary character, A transferee of the totality of the rights of a mortgagee in possession may also be deemed to be a mortgagee in possession. But a tenant of the mortgagee in possession is inducted on the land in the ordinary course of management under authority derived from the mortgagor and so long as the mortgage subsists, even under the ordinary law he is not liable to be evicted by the mortgagor.

A mortgagee, therefore, occupies a fiduciary character and even though he is not a trustee for the mortgagor, his duties are akin to those of a trustee: see p. 480, Mulla's Transfer of Property Act, 1956 edn.

13. There are other difficulties in holding a mortgagee to be a tenant. A tenant is liable to pay only rent. A mortgagee, on the other hand, is subject to several liabilities specified in Section 76 of the Transfer of Property Act. He must manage the property as a person of ordinary prudence would manage it, if it were his own. He must use his best endeavours to collect the rents and profits thereof. He must keep full and accurate accounts of all sums received and spent by him as mortgagee and give the mortgagor at his request true copies of such accounts. He must debit the receipts from the mortgaged property in reduction of the amounts due to him on account of interest and so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money. If, therefore, a mortgagee is held to be a tenant, a heavier burden would be imposed on the mortgagor making redemption more difficult, for the mortgagee would then be liable to appropriate towards the amount due to him only the rent payable under the Tenancy Act, which has been reduced from time to time and is now equal to only five times the assessment. Moreover, u/s 7 of the Tenancy Act of 1939 and under old Section 34 and under present Section 31 of the Act of 1948, a landlord can terminate the tenancy and apply for possession of the land on the ground that he requires it bona fide for personal cultivation. Can a mortgagor obtain possession on this ground even during the pendency of the mortgage? Under Sub-section (2) of Section 5 of the Tenancy Act of 1939 and u/s 14 of the Act of 1948 a tenancy can be terminated on the ground of subletting. If, therefore, a mortgagee after cultivating the land personally, introduces a tenant on the land, can the mortgagor evict him on the ground that he has sub-let the land? It is difficult to imagine that the Legislature by merely inserting Section 2A in the Tenancy Act of 1939 intended to so radically alter the legal relationship between a mortgagor and a mortgagee.

14. The object of the Tenancy Act of 1939 was, as stated in its preamble, to provide for the protection of tenants of agricultural lands. The provisions of the Act show that this object was sought to be achieved in two ways, firstly, by giving to the tenants security of tenancy by providing that they shall not be evicted except on the grounds specified in the Act and in the manner provided therein. Provision was also made for determination of reasonable rent and also

for fixation of maximum rent. A mortgagee in possession enters upon possession of the land not for the purpose of personally cultivating it, but with the object and purpose of paying himself wholly or partially out of the income from the land. He is entitled to retain possession of the land until he has recovered the full amount due to him. He is also not liable to pay any rent. He does not, therefore, stand in need of protection of the Act either in respect of his right to possession or liability to pay rent. Consequently, it was not necessary to confer the status of a tenant upon him. This evidently is the reason why he has been specifically excluded by Clause (c) in Section 4 of the Tenancy Act of 1948. As pointed out by the Supreme Court in *Dahya Lala v. Rasul*, at p. 330, a mortgagee in possession has been excluded from the class of deemed tenants on grounds of public policy. Public policy must have been the same two years previously when Section 2A was inserted in the Tenancy Act of 1939. It does not, therefore, appear that the Legislature intended to include a mortgagee in possession in the class of deemed tenants u/s 2A of the Act. A tenant of a mortgagee, however, stands on a different footing. He is introduced on the land in the ordinary course of management by the mortgagee in exercise of authority derived from the mortgagor. He needs as much protection as any other tenant.

15. Section 2A gave an opportunity to a landlord to apply to the Mamlatdar and obtain a declaration that the person lawfully cultivating his land was not his tenant. It has, therefore, been urged that full effect must be given to the wide words used in Section 2A. The opportunity given to landlords by Section 2A was, however, a limited one and could only be exercised in respect of persons who were on the land on November 8, 1947, or earlier. This provision does not, therefore, by itself suggest that a mortgagee in possession was intended to be covered by Section 2A.

16. On behalf of the petitioners reliance has been placed on the observation of Chagla C.J. in *Jaswantrai Tricumlal v. Bed Jiwi*, at p. 175, that under the old Act all persons lawfully on the land were intended to be protected. Reliance was also placed on the following observations of the Supreme Court in *Dahya Lala v. Rasul* (p. 329):

...A person who is deemed a tenant by Section 4 is manifestly in a class apart from the tenant who holds lands on lease from the owner. Such a person would be invested with the status of a tenant if three conditions are fulfilled?(a) that he is cultivating land lawfully (b) that the land belongs to another person, and (c) that he is not within the excepted categories.

These observations must be read in their context. In the first case the question which arose for consideration was whether a sub-tenant could be deemed to be a tenant. In the case before the Supreme Court the dispute was about a tenant brought on the land by the mortgagee. Moreover, as pointed out above, the Supreme Court has itself made a distinction between a mortgagee and a mortgagee's tenant.

17. Reliance has also been placed on the following observations in the judgment of the Full Bench in *Jaswantrao Tricumlal v. Bai Jiwi* (p. 175) ;

...It may be pointed out that the Legislature in the Act of 1948 in Clause (c) of Section 4 has taken mortgagees in possession out of the categories of statutory tenants. Therefore, whatever lacuna there was in the old Act has now been made good. The learned Judge (Bavdekar J.) relies on this fact for strengthening his view that mortgagees in possession were never intended to be treated as statutory tenants, and if the tenants of mortgagees in possession were not intended to be treated as statutory tenants, then on a parity of reason sub-tenants could not also be considered as statutory tenants. In our opinion, the amendment effected by Section 4(c) of the Tenancy Act strongly supports the view which we are inclined to take that under the old Act all persons lawfully on the land were intended to be protected, but the Legislature realising the difficult position in which the mortgagor would find himself if the tenancy created by the mortgagee in possession were to be protected and on redemption the mortgagor was prevented from getting possession of the land, made the necessary amendment by enacting Section 4(c).

Stress has been laid on the fact that in the opinion of the Full Bench the amendment had not been made to clarify the law. Apart from the fact that these observations must be read in the context of the case, which arose for consideration before the Full Bench, the last sentence shows that according to the learned Judges the amendment in Section 4 had been made so that there may be no difficulty in the way of a mortgagor's obtaining possession of the land not because of the mortgagee's claiming to be a tenant, but because of the tenancy created by the mortgagee. It is, therefore, obvious that the Full Bench was not considering the question of a mortgagee in possession being deemed to be a tenant. In fact there is no discussion in the judgment on this point.

18. In *Salman Raje v. Madhavsang* (1963) 4 Guj. L.R. 817, the Gujarat High Court has held that a tenant of a mortgagee can be deemed to be a tenant u/s 2A of the Tenancy Act of 1939. The judgment shows that the learned Judges were aware of the difficulties, which would consequently result. At p. 826 it has been observed:

...We may observe that these very difficulties were urged in support of the limited construction of Section 2A before the Full Bench in *Jaswantrao Tricumlal v. Bai Jiwi*. At page 174 of the Report the learned Chief Justice, though he was there dealing with the case of a sub-tenant, refuted this very argument by observing that questions of statutory protection can only arise when the contractual relations come to an end, that is, in the case of a sub-tenant which he was dealing when the contractual tenancy of a tenant would be determined. Similar would be the position in the case of a mortgagee in possession when his mortgage gets extinguished. A further answer to Mr. Chhatrapati would be that the same difficulties must also arise in the case of a mortgagee's tenant and yet such a tenant was held to be entitled to the status of a protected tenant in

Jaswantra Tricumlal v. Bai Jiwi. The question whether a mortgagee has to pay fair rent to his statutory landlord, the mortgagor, would be best answered by stating, as was done in Jaswantra Tricumlal v. Bai Jiwi, that no such question would arise so long as the mortgage subsists.

With respect, it may be pointed out that if Section 2A is held to include a mortgagee in possession, he would be a deemed tenant not only after the redemption of the mortgage but also during the subsistence of the mortgage. The learned Judges appear to have relied on the following observations of Chagla C.J. (p. 175):

... Therefore, with very great respect, we must hold that the view taken by the learned Judge with regard to the position of the tenants of the mortgagees in possession under the old Act of 1939 is not the correct position, and that as far as the old Act is concerned the position of the tenants of the mortgagees in possession and the position of sub-tenants was identical; they both became statutory tenants, one on the redemption of the mortgage and the other on the termination of the contractual tenancy.

If we may say with respect, these observations are correct, because a tenant of a mortgagee can only be deemed to be a tenant of the mortgagor after the redemption of the mortgage. A sub-tenant would also be deemed to be a tenant of the landlord after the contractual tenancy has been terminated. A mortgagee, on the other hand, will become a tenant as soon as he enters upon the possession of the land. With respect, therefore, we are unable to agree with the view taken by the Gujarat High Court.

19. It has been urged on behalf of the mortgagors that the consequence of a mortgage with possession is that the ownership rights are split up, that all the rights except the right to redeem vest in the mortgagee, that the mortgagee acquires a heritable and transferable interest in the property and that, consequently, it cannot be said that the mortgaged land does not belong to him or that he is cultivating the land which belongs to another person. In support of this argument reliance is placed on the decision of Tendolkar J. in Laxmipat Singhania v. Larsen & Toubro Ltd. (1949) 52 Bom. L.R. 688, in which it was held that the words "belonging to" in Section 4(7) of the Bombay Rents, Hotel and Lodging House Rates Control Act, mean very much the same thing as "of the ownership of", though not necessarily "of the absolute ownership of". At p. 693 the learned Judge has observed that there may be in relation to property a dual ownership for a limited period of time and that the tests as to whether for a limited period of time a temporary ownership has been created are:

- (1) whether there is a demise of the property,
- (2) whether there is full dominion and control over the property in the demisee, and
- (3) whether the risk of the property falls on the demisee, or the absolute owner.

On the strength of the decision it has been urged that during the period of mortgage with possession there is dual ownership and that the property can be said to belong to both the mortgagor and the mortgagee. It is not necessary for us to decide this point in these applications, because for the other reasons which I have given above, it seems to us that the mortgagee in possession was not intended to be brought within the scope of Section 2A of the Tenancy Act of 1939.

20. We are accordingly of the opinion that a mortgagee in possession could not be deemed to be a tenant u/s 2A of the Bombay Tenancy Act of 1939. The view taken by the Full Bench of the Revenue Tribunal is, in our opinion, correct.

21. Rule in each application discharged. No orders as to costs.

22. Rule in C.A. No. 3162 of 1964 discharged. No order as to costs.